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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 003455

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SUBJECT: PUSHING THE SHIA AND KURDS TO IMPROVE THE DRAFT CONSTITUTION

REF: BAGHDAD 3449

Classified By: Pol Couns Robert Ford, reason 1.4 (b) and (d)

1. Summary: After a vigorous debate, Shia and Kurdish political leaders agreed to consider changing the draft constitution to fix our demand for clearly stated individual freedom of religion and to clarify that there should be a goal of no less than 25 percent representation of women in the National Assembly, rather than a strict quota, as well as textual changes on federalism and de-Baathification aimed at garnering at least some Sunni Arab support. Deputy President Abdel Mehdi and Kurdish leader Rowsch Shaways initially were sanguine about having a Shia-Kurd constitution deal in hand; they seemed uninterested in discussing anything further with even Ayed Allawi's Iraqiya bloc (the third largest in the National Assembly), much less the Sunni Arab negotiators. After DCM pushed hard, they agreed to meet with the Sunni Arabs on August 23 evening. Our initial readout of that meeting was that the atmospherics were good but there were no deals on anything in the text. We will track to make sure the changes we want on religious freedom and women's representation are put in the text on August 24 while we also push again for Shia-Kurd engagement with the Sunni Arabs. End Summary.

2. (C) DCM and poloffs called on Deputy President Abdel Mehdi, National Assembly Constitution Committee Chair Shaykh Humam al-Hamudi, Constitution Committee member Sherwan Wa'ili, Deputy Prime Minister Rowsch Shaways and Constitution Committee Vice Chair Fuad Masum (the first three Shia Islamists, the latter two Kurds) August 23 to discuss improvements to the draft of the Iraqi constitution. The first issue of contention concerned which copy of the draft represented the latest version. The DCM asked the Iraqi interlocutors what draft they considered to be the final draft. When none of our interlocutors was absolutely certain, the DCM urged them strongly to get a definitive draft ready as quickly as possible. They all agreed. (Comment: The multiplicity of draft texts, and the total breakdown of confidence between the Shia and Kurd drafters has made updating and tracking the drafts exceptionally difficult. End Comment.)

Pushing for Individuals' Religious Freedom

3. (C) DCM then urged the group in the strongest terms to change the language in Section 2, article 41 to include individual freedom of religion. (The article would then read "Every individual has freedom of thought, conscience and religion.") This language mattered to the President and the Secretary, and the August 23 editorial in the New York Times

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showed it was reaching a broad American audience as well, he underscored. After a moment of silence, Sherwan Wa'ili said Islamic Law does not allow a Muslim to leave the Islamic faith. DCM and poloff emphasized that this language was found in international pacts, and Iraq could not hope to pretend to be a leader on human rights without it. Abdel Mehdi accepted the point and promised to take our proposal to the Shia Coalition full leadership.

4. (C) DCM also raised the ambiguous language we had seen concerning the quota reserved for women in the future national assembly and recommended a technical fix to clarify it. He also noted that the constitution needed to make clear that the draft's guarantee of all human rights provided for in international treaties had to be unconditional, as any attempt to circumscribe these rights through provisions of the constitution would constitute unilateral amendments to Iraq's treaty obligations, which is prohibited under international law. Abdel Mehdi understood the improvements and said they would try to get these approved also.

Federalism: Worth Getting Sunni Support?

5. (C) DCM then raised the issue of federalism laid out in section five. He highlighted the importance to the U.S. and Iraq of broad support, including from the Sunni Arab

community, for the draft constitution. From our many meetings with Sunni Arabs, he observed, it is obvious that federalism is the most sensitive issue. The DCM noted that simpler language in section five, devoid of all the detail, would make it easier for Sunni Arab leaders to convince their own constituencies. It was especially important, he underlined, that the future national assembly have a role in determining the shape of federalism in Arab parts of Iraq. DCM suggested specific fixes to the section that might make it more palatable to at least some Sunni Arabs.

16. (C) Abdel Mehdi pushed back hard: the Sunni Arabs were impossible to deal with, and changing one part of the draft constitution might look easy but would cause dissatisfaction in the Shia community. DCM agreed that the Sunni Arab negotiators were hard to work with, but that was not a good reason for the Shia and Kurds to have avoided meeting them until almost too late in the process. We also noted that Shia and Kurdish credibility among the Sunni Arabs, never high, had plummeted; the Sunni Arabs noticed that U.S. diplomats met them more often than their fellow Shia and Kurd negotiators. Above all, DCM underscored, the draft constitution should have some measure of Sunni Arab support. Abdel Mehdi asked whether we could guarantee that support. DCM responded that while we could not guarantee support, if the Shia and Kurds made no effort to meet some core Sunni Arab demands we could guarantee the Sunni Arabs would not support the constitution.

17. (C) Kurdish leader Rowsch Shaways remained apparently unmoved and said the draft constitution deal was structured such that changing one section could unravel the deal in other parts. Abdel Mehdi then emphasized that the Shia Coalition leaders want the right to set up one or more regional entities like the one the Kurds have. PolCouns noted that we have stressed the Sunni Arabs must acknowledge the right of governorates to join into regional entities even if the actual implementation is delayed. Abdel Mehdi swept this aside. The next national assembly is an "unknown" in terms of who would dominate it. Ultimately, however, he and Rowsch agreed to take the language back to their leaders.

De-Baathification Language Not Necessary

18. (C) Lastly, DCM urged that the language in section 6, article 145 about the continued operation of the de-Baathification commission be removed. The commission is already working, he noted, and its operations do not depend in any way on the constitution. Sunni Arabs have highlighted to us, however, that this article is provocative to Sunni Arabs seeking language that instead promotes national reconciliation. We suggested alternate language that calls for the Iraqi judicial system to punish those responsible for crimes committed against the Iraqi people during the previous regime in accordance with Iraqi law. Abdel Mehdi argued that elements in the Shia community would not support the constitution without such language. DCM said there was less a question about support for the constitution among the Shia community than among the Sunni Arab community.

Comment

19. (C) None of the Shia and Kurds appeared interested in engaging even Ayed Allawi's Iraqiya group, the National Assembly's third-largest bloc, on refinements to the draft constitution, much less engaging with the Sunni Arabs. Instead, they appear to have concluded that they control the National Assembly now and can take the text to the referendum where they are certain the Sunni Arabs cannot muster a two-thirds vote in three governorates to block its passage. After the Ambassador weighed in to Abdel Mehdi with a phone call, the Shia Islamist Deputy President agreed to host a group of the Sunni Arabs to dinner August 23. Shia independent Ali Debbagh, also at the dinner, told PolCouns late August 23 that the atmospherics were good, but no deals were reached. Sunni Arab negotiator Salah Mutlak said the initial discussions were unpleasant but as the dinner wore on the atmosphere improved and by the end the Shia and Sunni Arabs had agreed on much. He concluded that the two sides are "not far" apart on agreed language on federalism. We have heard such kinds of optimism before only to see apparent deals founder, and the gaps this time appear to be very wide. We will be vigorously tracking both the textual changes and the discussions between the Shia, Kurds and Sunni Arabs on August 24.
Khalilzad